

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Tebor	Team: Team # 4	CCRB Case #: 200800579	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/10/2008 4:00 PM	Location of Incident: 18th Avenue and Benson Avenue	Precinct: 62	18 Mo. SOL 7/10/2009	EO SOL 7/10/2009	
Date/Time CV Reported Thu, 01/10/2008 7:21 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 01/10/2008 7:21 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Hagan	01470	933825	062 PCT
2. SGT Christop Zaleski	01803	923399	062 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Horacio Maldonado	22375	930737	062 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Hagan	Abuse: PO John Hagan questioned § 87(2)(b)	
B.SGT Christop Zaleski	Abuse: Sergeant Christopher Zaleski questioned § 87(2)(b)	
C.SGT Christop Zaleski	Discourtesy: Sgt. Christopher Zaleski spoke obscenely and rudely to § 87(2)(b)	
D.SGT Christop Zaleski	Force: Sgt. Christopher Zaleski used physical force against § 87(2)(b)	

### Synopsis

On January 10, 2008, at approximately 4:00 PM and in the vicinity of 18<sup>th</sup> Avenue and Benson Avenue in Brooklyn, § 87(2)(b) was walking back to his work from a pizza restaurant. A black Chevy Impala pulled up and parked in front of § 87(2)(b) and Sergeant Christopher Zaleski, PO John Hagan and PO Horacio Maldonado from the 62<sup>nd</sup> Precinct exited the vehicle. Sergeant Zaleski or PO Hagan then asked § 87(2)(b) for his identification (**Allegations A-B**). Sergeant Zaleski then asked § 87(2)(b) if he was “one of those guys that says fuck the cops?” and called § 87(2)(b) a “fucking punk” (**Allegation C**). Sergeant Zaleski then started “nudging” § 87(2)(b)’s left shoulder with his left shoulder approximately 2 or 3 times. When § 87(2)(b) tried to leave, Sergeant Zaleski pushed § 87(2)(b)’s chest 4 or 5 times with open palms. At this point, § 87(2)(b) came outside. Sergeant Zaleski pushed § 87(2)(b) 5 to 7 more times while § 87(2)(b) was present (**Allegation D**).

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) called the CCRB on January 10, 2008 to report his complaint (encl. 4A-B). He provided a phone statement on January 14, 2008 (encl. 5) and was interviewed at the CCRB on January 28, 2008 (encl. 6A-E). § 87(2)(g) § 87(2)(b) stated that on January 10, 2008 at approximately 4:00 PM and in the vicinity of 18<sup>th</sup> Avenue and Benson Avenue in Brooklyn, he was coming back from a pizza restaurant, which is approximately one block down the street from his workplace.

As he began to cross the street to his work, a black Chevy Impala pulled up in front of him. Three officers, identified through this investigation as PO John Hagan, PO Horacio Maldonado and Sergeant Christopher Zaleski from the 62<sup>nd</sup> precinct, exited the vehicle. PO Hagan was described as a white male, approximately 6’2” or 6’3” feet tall, muscular with light brown or blonde hair. Sergeant Zaleski was described as a white male, approximately 6’ feet tall, muscular, with light brown or blonde hair. PO Maldonado was described as a white or Hispanic male, approximately 5’7” or 5’8” feet tall, with an average build, dark hair, a beard and a moustache.

§ 87(2)(b) added that he did not know at the time that they were officers since they were all in plainclothes. Because he did not know that they were officers, § 87(2)(b) started to walk away. One of the officers, § 87(2)(b) did not recall which officer, told him “come here.”

§ 87(2)(b) then walked over to the officers and either PO Hagan or Sergeant Zaleski asked him for identification. § 87(2)(b) could not remember which officer specifically asked for identification. § 87(2)(b) then asked the officer, “Who are you guys?” The officers did not respond, but just asked him again for identification. § 87(2)(b) then asked, “For what reason?” Sergeant Zaleski told him, “Give the I.D. and don’t worry about it.” The officers asked § 87(2)(b) for identification approximately three to four times. § 87(2)(b) asked the officers why he was stopped and Sergeant Zaleski told him that he was “walking down the street and looked suspicious.” § 87(2)(b) then gave Sergeant Zaleski his identification. Sergeant Zaleski handed the identification to PO Hagan and PO Hagan took the identification to the driver’s side of the car.

§ 87(2)(b) did not see PO Hagan get into the car or do anything with his driver's license. § 87(2)(b) asked Sergeant Zaleski again, "Why are you stopping me?" but the Sergeant Zaleski did not say anything. Sergeant Zaleski then asked where § 87(2)(b) was going. § 87(2)(b) told him that he was going back to work and if he liked, Sergeant Zaleski could go speak to his boss who was across the street.

Sergeant Zaleski then went across the street and § 87(2)(b) saw his boss, § 87(2)(b) exit his workplace to speak with the officer. During this time, PO Hagan asked § 87(2)(b) again if he had ever been arrested. § 87(2)(b) then asked PO Hagan for his name and his precinct and PO Hagan told him that it was "John Hayden" and that he was from the 62<sup>nd</sup> Precinct. After Sergeant Zaleski finished talking with § 87(2)(b)'s boss, he came back across the street to speak with § 87(2)(b). Sergeant Zaleski spoke with § 87(2)(b)'s boss for approximately 2-3 minutes. § 87(2)(b) stated that his boss was still outside for the remaining part of § 87(2)(b)'s interaction with the officers.

§ 87(2)(b) told the officers that he was late for work and asked them if he could go back to work. Sergeant Zaleski then told § 87(2)(b) that he was not finished with him. Sergeant Zaleski asked § 87(2)(b) if he had a problem "with the cops" and if he was the "one of those guys that says fuck the cops." § 87(2)(b) told the officers, "I don't have a problem with you. I don't really know why you stopped me. I feel like this is a waste of my time and your time." Sergeant Zaleski told him, "I don't really care about you" and "You're the one with a chip on your shoulder." § 87(2)(b) then asked him, "Why would I have a chip on my shoulder?" Sergeant Zaleski replied, "Because you're a fucking punk." Sergeant Zaleski called § 87(2)(b) a "fucking punk" approximately 4 or 5 times. As he was saying this, Sergeant Zaleski started pushing or "nudging" § 87(2)(b)'s left shoulder with his left shoulder. § 87(2)(b) tried to walk away, but the officer continued "nudging him" with his shoulder. Sergeant Zaleski "nudged" § 87(2)(b)'s shoulder approximately 2 or 3 times. In his initial narrative and in his phone statement, § 87(2)(b) stated that Sergeant Zaleski called him a "punk" and asked him if he was a "tough" guy. In addition, in his phone statement, § 87(2)(b) stated that Sergeant Zaleski asked him if he "hated cops." He did not make the allegations of discourtesy until his formal CCRB interview.

Sergeant Zaleski then gave § 87(2)(b) his identification. § 87(2)(b) said, "Thank you" and tried to walk away by walking to the right of Sergeant Zaleski. Sergeant Zaleski walked back in front of § 87(2)(b) and said, "I'm not finished with you." Sergeant Zaleski then started pushing § 87(2)(b)'s chest with his open hands. Sergeant Zaleski pushed § 87(2)(b) 4 or 5 times. § 87(2)(b) added that Sergeant Zaleski was pushing him back onto the sidewalk and that he was pushed back approximately 2 or 3 feet. § 87(2)(b) did not sustain any injuries.

§ 87(2)(b) who works across the street and next door to § 87(2)(b)'s work place, saw what was happening and ran over. He told the officers, "I know this man. What's going on?" The officers did not respond to him. § 87(2)(b) then grabbed onto § 87(2)(b)'s arm and tried to pull him away from what was happening. Sergeant Zaleski then said, "Wait, I'm not done with him," and proceeded to push § 87(2)(b) three or four more times. During this time, § 87(2)(b) was still pulling § 87(2)(b) away. Sergeant Zaleski pushed him two or three more times. At this point, § 87(2)(b) and the officer were in the middle of the street. Sergeant Zaleski told § 87(2)(b) "§ 87(2)(b) we know where you work. We'll see you again."

Later, § 87(2)(b)'s boss told him that Sergeant Zaleski had said that they saw § 87(2)(b) coming out of a well known drug house on Bay 19<sup>th</sup> Street. The officers did not tell this to § 87(2)(b) nor did § 87(2)(b) know of any drug house in the area.

## **Results of Investigation**

### **Civilian Statements**

§ 87(2)(b)

In his phone statement on February 5, 2008 (encl. 7), § 87(2)(b)'s boss, § 87(2)(b), stated that he remembered the incident from January 10, 2008. He stated that he came outside because he saw § 87(2)(b) talking with two or three officers in plainclothes. He watched § 87(2)(b) speak with the officers for a few minutes and

then walked back inside. He stated that the officers were still present when he walked back inside. § 87(2) did not talk to anyone during this time. § 87(2) would not provide his last name.

§ 87(2)(b)

§ 87(2)(b) provided his phone statement on February 7, 2008 (encl.8) and was formally interviewed on February 12, 2008, at § 87(2)(b) in Brooklyn (encl. 9A-C). He stated that on January 10, 2008, at approximately 4:00 PM and in the vicinity of 18<sup>th</sup> Avenue and Benson Avenue in Brooklyn, he was in the front of his office. § 87(2)(b)'s office overlooks § 87(2)(b) and at one point he looked out of the window and saw that there were three officers in plainclothes speaking with a man who works next door, identified as § 87(2)(b). § 87(2)(b) was standing at the window of his store which is approximately 75 feet from the incident location. According to § 87(2)(b) he did not know § 87(2)(b)'s name and only talks with him "occasionally."

§ 87(2)(b) did not see the officers approach § 87(2)(b). § 87(2)(b) stated that when he saw the officers, they were standing approximately 5 feet from § 87(2)(b) during the interaction. § 87(2)(b) observed § 87(2)(b) speaking to these officers for approximately four or five minutes. § 87(2)(b) could not hear the conversation during this time and did not hear either the officers or § 87(2)(b) raise their voices. § 87(2)(b) stated that he realized that the men were all officers because they had their badges out.

He then decided to walk over to the group and introduced himself to an officer, identified through this investigation as Sergeant Zaleski. § 87(2)(b) told Sergeant Zaleski that he knew § 87(2)(b) and that § 87(2)(b) worked in the store next door. Sergeant Zaleski told § 87(2)(b) that he had asked § 87(2)(b) for identification and § 87(2)(b) refused to provide identification. § 87(2)(b) did not hear the officers ask for identification. One of the officers also told § 87(2)(b) that they wanted to see § 87(2)(b)'s identification because of "drug activity." § 87(2)(b) then spoke with § 87(2)(b) and asked him why he refused to provide identification. He also told § 87(2)(b) that it is New York State law that he has to provide identification. § 87(2)(b) responded by asking, "Well, what did I do?" § 87(2)(b) then grabbed § 87(2)(b)'s arm and took him to the shop where he works. According to § 87(2)(b) there was no discourteous language used by § 87(2)(b) or the officers during the interaction and no physical contact made between § 87(2)(b) and the officers.

#### Officer Statements

PO John Hagan and Sergeant Christopher Zaleski were interviewed on April 1, 2008, and May 8, 2008 respectively. A Stop & Frisk Report was not filed electronically; however, on June 9, 2008, a handwritten Stop & Frisk Report was located by the CCRB (encl. 20). PO Hagan and Sergeant Zaleski re-interviewed on June 24, 2008, and July 11, 2008, respectively, in order to comment on the Stop & Frisk Report.

In this closing report, PO Hagan's and Sergeant Zaleski's first statements will be listed. The first statements are followed by the handwritten Stop & Frisk Report and then the officers' second statements, which were made directly after each of them viewed the handwritten Stop & Frisk Report.

#### *PO John Hagan CCRB Interview I*

PO John Hagan was interviewed at the CCRB on April 1, 2008(encl. 11A-B). Because the Stop & Frisk Report was created, but not filed, the CCRB did not have the Stop & Frisk Report in regard to this incident at the time of PO Hagan's first interview at the CCRB.

PO Hagan stated that on January 10, 2008 he worked from 9:30 AM to 6:00 PM and was working as the Burglary Apprehension Team. He was working with PO Maldonado and was dressed in plainclothes. During his first interview at the CCRB, PO Hagan stated that he did not remember if Sergeant Zaleski was present during the incident. PO Hagan was assigned to a black Chevy Impala. PO Hagan's memo book (encl 10A-B) states that at 4:20 PM, 1 male was stopped at 18<sup>th</sup> Avenue and Benson Avenue and that a report was prepared.

PO Hagan stated that he and his team were circling the block because there is heavy drug activity on Bay 19<sup>th</sup> Street which is one block away from the incident location. PO Hagan stated that the officers had circled the block “a couple of” times and he saw § 87(2)(b) looking at the officers each time. When PO Hagan saw § 87(2)(b) the vehicle was still in motion. § 87(2)(b) put his hands up in the air and PO Hagan thought that § 87(2)(b) was calling him over. § 87(2)(b) was standing on the sidewalk. PO Hagan did not know if § 87(2)(b) said anything because his windows were up. PO Hagan did not have any conversation with PO Maldonado about getting out of the car and speaking with the individual.

PO Hagan stopped and got out of the car. He did not remember if PO Maldonado got out of the car. He approached § 87(2)(b) and immediately, § 87(2)(b) began cursing at him and stated, “What the fuck? Why are you pulling me over? You’re driving around the block three times looking at me.” PO Hagan told him, “We’re not looking at you. I thought that you were calling us over.” PO Hagan explained to § 87(2)(b) that he was circling the block because he was looking for a drug dealer on another block. § 87(2)(b) then asked PO Hagan, “What’s your name?” PO Hagan told him his name and then asked § 87(2)(b) for his name. § 87(2)(b) told him, “I don’t have to tell you.” PO Hagan told him, “Alright, you don’t want to tell me your name.” § 87(2)(b) then told PO Hagan his name. § 87(2)(b) told PO Hagan his name and his date of birth. This information was recorded, but PO Hagan did not remember where it was recorded. PO Hagan stated that he did not ask § 87(2)(b) for any form of identification. He did not think that PO Maldonado talked to § 87(2)(b). He stated that § 87(2)(b) was free to leave at this time. The officers then got into their car and left.

Neither PO Hagan nor PO Maldonado made physical contact with § 87(2)(b). PO Hagan stated that neither he nor PO Maldonado used any discourtesies against § 87(2)(b) and did not call him a “Fucking punk.”

*Sergeant Christopher Zaleski*  
*CCRB Interview I*

Sergeant Christopher Zaleski was interviewed at the CCRB on May 12, 2008 (encl. 16A-B). Because the Stop & Frisk Report was created, but filed, the CCRB did not have the Stop & Frisk Report filed in regards to this incident at the time of Sergeant Zaleski’s first interview.

He stated that on January 10, 2008, he was working from 9:03 AM to 6:00 PM and was assigned as the BAT supervisor. He was working with PO Hagan and PO Maldonado. Sergeant Zaleski was in plainclothes and was assigned to an unmarked Chevy Impala. Sergeant Zaleski did not have any memo book entries for the incident.

Sergeant Zaleski stated that there is a known drug location around the block from the incident location. The officers were watching the area and drove in circles around the block two times. He stated that when the officers first drove by § 87(2)(b) he looked into their car. The second time that the officers passed § 87(2)(b) he threw his hands in the air. Sergeant Zaleski stated that there was only a lapse of 1 or 2 minutes between the first time that the officers saw § 87(2)(b) and the second time that they saw him. Sergeant Zaleski could not remember how § 87(2)(b) held his hands up or if he held up both hands, but he stated that the officers thought that § 87(2)(b) was calling them over. He thought that all of the officers saw § 87(2)(b) make this gesture. There was no discussion in their car regarding speaking with § 87(2)(b).

The officers then pulled over, identified themselves and asked § 87(2)(b) if he needed anything. Sergeant Zaleski stated that the officers also showed their shields to § 87(2)(b). § 87(2)(b) asked the officers, “Who do you think you are?” and “What are you stopping me for?” § 87(2)(b) also began to curse at the officers. The officers asked § 87(2)(b) if there was something wrong or if he needed something. Sergeant Zaleski stated that all of the officers were talking to § 87(2)(b) during this time. An officer then asked for § 87(2)(b)’s identification so that they could fill out a Stop & Frisk Report. Sergeant Zaleski did not remember who asked for the identification. He stated that § 87(2)(b) then asked the officers, “Why do you want to see my fucking I.D.?” Sergeant Zaleski told § 87(2)(b) that he needed the identification in order to fill out the Stop & Frisk Report. Sergeant Zaleski had to ask § 87(2)(b) 5 or 6 times for his identification. § 87(2)(b) finally complied and provided his identification to Sergeant Zaleski.

Sergeant Zaleski stated that while he was talking with § 87(2)(b) § 87(2)(b) came over and told Sergeant Zaleski that he works with § 87(2)(b). Sergeant Zaleski

explained to the individual, identified through this investigation as § 87(2)(b) that the officers had stopped because they thought that § 87(2)(b) was calling them over. § 87(2)(b) told Sergeant Zaleski that § 87(2)(b) was a “hothead.” He added that § 87(2)(b) stayed until the end of the interaction with § 87(2)(b).

Sergeant Zaleski stated that § 87(2)(b) did not attempt to leave and that he was free to leave during the entirety of the incident. Sergeant Zaleski did not call § 87(2)(b) a “fucking punk” and he did not hear PO Hagan or PO Maldonado say this. None of the officers made physical contact with § 87(2)(b).

Sergeant Zaleski thought that a 250 was filed for that day and he thought that either PO Hagan or PO Maldonado would have taken responsibility for the 250.

#### *Handwritten Stop & Frisk Report (encl. 20)*

The CCRB located a handwritten Stop & Frisk Report on June 9, 2008. The Stop & Frisk Report was not filed electronically; however, it was created on January 10, 2008. The Handwritten Stop & Frisk Report for § 87(2)(b) shows that he was stopped at 4:20 PM on January 10, 2008. § 87(2)(b) was stopped on 18<sup>th</sup> Avenue and Benson Avenue on the sidewalk. Under “Specify Which Felony/ Misdemeanor Suspected,” PO Hagan wrote “Burglary.” Under “What Were the Circumstances Which Led to Stop,” PO Hagan checked the following boxes: Actions indicative of “Casing” Victim or Location; Actions Indicative of Acting as a Lookout; Furtive Movements; Actions Indicative of Engaging in Violent Crimes; Wearing Clothes/Disguises Commonly Use in Commission of Crime. Under Additional Circumstances/Factors, he checked the following boxes: Area had High Incident of Report Offense of Type Under Investigation; Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity; Evasive; False or Inconsistent Response to Officer’s Questions; Ongoing Investigations, e.g., Robbery Pattern. He also marked that § 87(2)(b) was “Uncooperative.” This Stop & Frisk Report was signed by Sergeant Zaleski.

#### *PO John Hagan*

##### *CCRB Interview II*

PO John Hagan was interviewed at the CCRB for the second time on June 24, 2008 (encl 12A-B) so that the CCRB could question him regarding the information on the Stop & Frisk Report. In his second interview, PO Hagan did not wish to provide an additional full narrative regarding the incident. PO Hagan was shown the handwritten Stop & Frisk report that he had created regarding the stop of § 87(2)(b). PO Hagan stated that he filled out the Stop & Frisk Report on January 10, 2008. He did not know when Sergeant Zaleski signed the report on the same day.

PO Hagan stated that he wrote “burglary” under “Felony/Misdemeanor Suspected” because § 87(2)(b) “could have been casing the buildings and acting as a lookout.” PO Hagan was reminded that in his original statement, he stated that § 87(2)(b) looked as though he were asking for help. PO Hagan was then asked why he would write down burglary and he stated that he did not recall.

PO Hagan stated that he marked down “Actions Indicative of ‘Casing’ Victim or Location” because § 87(2)(b) was walking down 18<sup>th</sup> Avenue. PO Hagan stated that the officers had circled the block three times and he saw § 87(2)(b) one time. He did not remember if Sergeant Zaleski or PO Maldonado noticed § 87(2)(b).

He also marked down “Actions Indicative of Acting as a Lookout” because § 87(2)(b) was “staring” into the officers’ car. He marked “Furtive Movements” because § 87(2)(b) was waving his hands. Although PO Hagan originally believed that this was a request for help, since it was not a request for help, PO Hagan considered that § 87(2)(b) would have been waving his arms for another reason. § 87(2)(b) also could have been “casing” a building and therefore PO Hagan marked “Actions Indicative of Engaging in Violent Crimes.” When asked which building, PO Hagan responded “the one he was in front of.” He stated that § 87(2)(b) was several feet from the building. He did not recall which building it was or if § 87(2)(b) was looking into the building.

PO Hagan stated that upon approaching § 87(2)(b) he did not witness anything indicative of burglary or a violent crime. PO Hagan added that after he had interacted with § 87(2)(b) and realized that he was not asking for help, he thought that he might be involved in a crime.

*Sergeant Christopher Zaleski*  
*CCRB Interview II*

Sergeant Christopher Zaleski was interviewed for a second time at the CCRB on July 11, 2008 (encl. 17A-B) regarding the information in the Stop & Frisk Report created by PO Hagan and signed by Sergeant Zaleski. He chose not to listen to a recording of his previous CCRB interview before providing a second statement. Sergeant Zaleski was shown the handwritten Stop & Frisk Report that was received after his first interview with the CCRB. Sergeant Zaleski recognized that the Stop & Frisk Report had been filled out by PO Hagan and that he had signed it. He stated that he usually signs the Stop & Frisk Reports at the end of each tour. Sergeant Zaleski was asked to explain the reason why on the Stop & Frisk Report, it lists § 87(2)(b) as suspected of burglary when he had originally stated that § 87(2)(b) was approached because he was asking for help.

Sergeant Zaleski stated that the officers circled the block several times and they had noticed § 87(2)(b) at the location. The first time the officers observed § 87(2)(b) they observed him for approximately two minutes. Sergeant Zaleski explained that the first time the officers circled the block, § 87(2)(b) was pacing on the sidewalk near several parked cars. § 87(2)(b) was not looking into the parked cars. Sergeant Zaleski did not remember how many times § 87(2)(b) paced back and forth, but he stated that it was more than once. § 87(2)(b) was also looking into the officers' car. The other officers in the car, PO Hagan and PO Maldonado, also noticed § 87(2)(b). There was a short conversation in which the officers discussed that § 87(2)(b) "looked like he was looking out for something." It took the officers approximately two or three minutes to drive around the block. The second time that they saw § 87(2)(b) he threw his hands up in the air. At that point, Sergeant Zaleski believed that § 87(2)(b) was trying to get the attention of the officers.

Sergeant Zaleski stated that PO Hagan had checked off "actions indicative of casing" on the Stop & Frisk Report because § 87(2)(b) was looking up and down the block. § 87(2)(b) also stayed in the same location within the time it took the officers to travel around the block. Sergeant Zaleski stated that this made him suspicious because the area is a commercial area and there is no reason for someone to remain in one spot in that area. He also checked off "actions indicative of a violent crime" because he thought that § 87(2)(b) might have been involved in burglary. He also checked that he was "wearing clothing indicative of a violent crime" because § 87(2)(b) was wearing bulky clothing and a hat. He could not remember exactly what § 87(2)(b) was wearing. The first time that Sergeant Zaleski drove around the block he observed § 87(2)(b)'s clothing and his behavior.

When asked why he suspected § 87(2)(b) of a violent crime, Sergeant Zaleski stated that there is a location around the corner from the incident location where a known burglar was fencing stolen property. The officers have arrested this burglar before. Although PO Hagan was not on Sergeant Zaleski's team at the time of the arrest, he was aware of the individual and his activities at the location. The officers had never seen § 87(2)(b) before, but they thought that he might be working with the individual they had arrested before. Sergeant Zaleski stated that they did not have a description of any other individuals that this burglar was working with, but they knew that he was working with a network of people and therefore believed that § 87(2)(b) could be part of the network.

*PO Horacio Maldonado*

PO Maldonado was interviewed at the CCRB one time on April 2, 2008 (encl. 14A-B). On January 10, 2008, PO Maldonado was working from 9:30 AM to 6:05 PM. PO Maldonado was assigned to the Burglary Apprehension Team and was working with PO Hagan. He was in plainclothes and was assigned to an unmarked black Chevy Impala. PO Maldonado does not have any memo book entries for the incident.

He stated that there is a drug prone location on Bay 19<sup>th</sup> Street. This location is a block from the incident location. The officers were circling the block for the majority of the day. He stated that as they were driving down 18<sup>th</sup> Avenue towards 86<sup>th</sup> Street, the officers saw an individual, identified through this investigation as § 87(2)(b) with his hands up. § 87(2)(b) was on the sidewalk facing the officers. PO Maldonado added that § 87(2)(b) had both hands up and appeared to be motioning towards himself. Both officers then exited the vehicle.

PO Maldonado exited the car with his shield and radio out. PO Hagan also had his shield and his radio out. PO Hagan then started speaking with § 87(2)(b). § 87(2)(b) asked the officers why they were looking at him. PO Maldonado did not remember the conversation that preceded this. § 87(2)(b) wanted to know PO Hagan's name and shield number. PO Hagan then told § 87(2)(b) his name, shield number and that he worked in the 62<sup>nd</sup> Precinct. He stated that § 87(2)(b) first provided his name. It is unclear if an officer asked for § 87(2)(b)'s name. After PO Hagan provided his name and shield number, § 87(2)(b) provided the officers with his identification. PO Maldonado did not know which officer asked for the identification. PO Maldonado was approximately 3 feet from § 87(2)(b) while he was talking to him. He stated that there was no physical contact between him or PO Hagan and § 87(2)(b). PO Maldonado did not call § 87(2)(b) a "fucking punk" and did not hear PO Hagan call him a "fucking punk."

PO Maldonado stated that § 87(2)(b) did not try to leave the location, but that he was free to leave at any point during the incident. § 87(2)(b) was rude and upset during the interaction.

He stated that PO Hagan filed the 250 for this incident. PO Maldonado stated that neither he nor PO Hagan interacted with any other civilians during this incident.

#### NYPD Documents

##### *Roll Call*

The 62<sup>nd</sup> Precinct roll call for tour 2 on January 10, 2008 (encl. 18A-K) shows that Sergeant Christopher Zaleski was working as the anti-crime supervisor from 9:03 AM to 6:00 PM and that PO Horacio Maldonado and PO John Hagan were assigned to anti-crime from 9:30 AM to 6:05 PM.

##### Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

##### Civilian CCRB History (encl. 3)

§ 87(2)(b) has one previous complaint with the CCRB § 87(2)(b)

##### Officer CCRB History (encl. 2A-B)

PO John Hagan has been with the NYPD for 4 years and he has no substantiated CCRB complaints. Sergeant Christopher Zaleski has been with the NYPD for 9 years and also has no substantiated CCRB complaints.

#### **Conclusions and Recommendations**

##### Officer Identification

§ 87(2)(b) provided the name of PO "John Hayden." A search in CTS identified this officer as PO John Hagan from the 62<sup>nd</sup> Precinct. PO Hagan's memo book was ordered (encl. 10A-B) and it showed that at 4:20 PM, PO Hagan stopped 1 male at 18<sup>th</sup> Avenue and Benson Avenue and that a report was prepared. The 62<sup>nd</sup> Precinct roll call for January 10, 2008 showed that PO Maldonado was working anti-crime with PO Hagan and that Sergeant Zaleski was working as the anti-crime supervisor.

Sergeant Zaleski also matches § 87(2)(b)'s description of a white male, approximately 6' feet tall, muscular with light brown or blonde hair. PO Maldonado matches his description of a white or Hispanic male, approximately 5'7" or 5'8" feet tall, with an average build and dark hair. Lastly, PO Hagan matches his description of a white male who is approximately 6'2" or 6'3" feet tall, muscular, and who has light brown hair.

§ 87(2)(b) stated that either PO Hagan or Sergeant Zaleski requested his identification. Both PO Hagan and Sergeant Zaleski participated in the stop by asking for identification and questioning § 87(2)(b). Sergeant Zaleski also corroborated the fact that § 87(2)(b)'s identification was requested; however, he could not remember who requested the identification. § 87(2)(g)

§ 87(2)(b) did not make any allegations regarding PO Maldonado. In addition, PO



Maldonado did not participate in the creation of the Stop & Frisk Report. § 87(2)(g)

#### Undisputed/Disputed Facts

It is undisputed that officers stopped to speak with § 87(2)(b) and that they requested his identification. ■

§ 87(2)(g)

#### Assessment of Evidence

§ 87(2)(b) maintained that while he was standing in the street, he was approached by three men who told him: “Come here.” § 87(2)(b) claimed that he did not realize the men were officers, so he started to walk away. § 87(2)(b) stated that immediately thereafter, one of the officers asked for his identification. PO Hagan asked § 87(2)(b) if he had ever been arrested and Sergeant Zaleski asked § 87(2)(b) if he hated cops.

In their first interview statements at the CCRB, PO Hagan and Sergeant Zaleski both stated that § 87(2)(b) threw his hands up in the air and appeared to be requesting help from the officers. § 87(2)(b) did not corroborate the officers’ statements that he asked for help and, in fact, stated that he did not realize that they were officers when he initially approached him.

In the first interview, PO Hagan stated that § 87(2)(b) told him his name and date of birth, whereas PO Maldonado and Sergeant Zaleski both stated that § 87(2)(b) provided his identification upon request. In PO Hagan’s original statement, he claimed that he only asked § 87(2)(b) for his name after § 87(2)(b) asked for PO Hagan’s name. From his statement, PO Hagan had a conversation with § 87(2)(b). However, PO Hagan also stated that § 87(2)(b)’s information was written down and in his memo book, he wrote “1 male stopped.” § 87(2)(g)

In the first statement, all of the officers originally stated that the stop was not investigative. Even though PO Hagan’s statement contradicts § 87(2)(b)’s statement that the officers asked him for his identification immediately, Sergeant Zaleski and PO Maldonado corroborate that he was immediately asked for identification. In addition, all three officers mention that § 87(2)(b) looked into their car before they stopped him; however, none of the officers elaborated on any suspicion stemming from this action. § 87(2)(g)

In their first CCRB interviews, all three officers also mentioned that the location where § 87(2)(b) was stopped is a drug prone location. This corroborates § 87(2)(b)’s statement that the officers told him that they wanted to see § 87(2)(b)’s identification because of “drug activity.” Neither Sergeant Zaleski nor PO Hagan mentioned the drug prone location in their second interview. The officers are a part of the Burglary Apprehension Team § 87(2)(g)

After the handwritten Stop & Frisk Report was obtained, the officers were interviewed for a second time and asked to explain the report which states that the officers suspected § 87(2)(b) of Burglary. Burglary was not mentioned in the officers’ first interviews. § 87(2)(g)

In his second interview, PO Hagan stated that he originally thought that § 87(2)(b) needed help. However, when he realized that § 87(2)(b) did not want help, he then decided that several of his actions were indicative of burglary. This is consistent § 87(2)(b)’s statement that Sergeant Zaleski told him that he was stopped for, “walking down the street and looking suspicious.” He provided vague responses as to why he thought § 87(2)(b)’s actions were indicative of a violent crime since he had noticed § 87(2)(b) before

approaching him. He stated that § 87(2)(b) was possibly “casing victim or location” because he was walking down 18<sup>th</sup> Avenue. When asked which building § 87(2)(b) was casing, PO Hagan replied, “the one he was in front of.” He also thought that § 87(2)(b) was a lookout because he was “staring” into the officers’ car. PO Hagan, however, had already stated that he was in an unmarked black Chevy Impala; this is a car frequently used by police officers, and had circled the block several times. The “casing” and suspicious behavior was not mentioned in the first interview.

§ 87(2)(g)

§ 87(2)(b) Sergeant Zaleski had noted in his first interview that when he first traveled around the block, he noticed § 87(2)(b). However, in his second interview, he stated that the officers had a discussion that § 87(2)(b) “looked like he was looking out for something.” § 87(2)(g)

§ 87(2)(b) He explained that § 87(2)(b) was pacing back and forth and was still in the same location the second time that the officers drove around the block. To Sergeant Zaleski, this was suspicious and possibly indicative of “casing” because the area is mostly commercial and there is no reason to linger in the area. He also thought that § 87(2)(b) was wearing a hat and bulky clothing. The hat and bulky clothing, however, are not remarkable in January. Sergeant Zaleski stated that he observed all of these factors when he first drove around the block.

Sergeant Zaleski also stated that there was a burglar that the officers had arrested before who was fencing stolen goods around the block from the incident location. Although he had never seen § 87(2)(b) he knew that the burglar had a network of people working for him and he suspected that § 87(2)(b) was working for this individual as well and acting as a lookout. He had no reason to connect § 87(2)(b) to this burglary network other than proximity to the fencing location, and had no descriptions of any other individuals in the network.

Both officers and § 87(2)(b) stated that § 87(2)(b) looked into the police car. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) In § 87(2)(b)'s initial narrative, he stated that Sergeant Zaleski called him a “punk” and asked him if he was a “tough guy.” Also in his phone statement, § 87(2)(b) stated that Sergeant Zaleski called him a “punk” and asked him if he “hated cops.” It is only in his CCRB formal statement that § 87(2)(b) made the allegation that Sergeant Zaleski asked him if he was “one of those guys that says fuck the cops?” and also called him a “fucking punk.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that Sergeant Zaleski pushed his shoulder 2 or 3 times and then pushed his chest 4 or 5 times. He added that once § 87(2)(b)

§ 87(2)(b) walked over, Sergeant Zaleski pushed him five to seven more times. Sergeant Zaleski denied these actions. § 87(2)(b) stated during his formal interview that he did not see any physical contact between § 87(2)(b) and the officers. § 87(2)(g)

§ 87(2)(b) The officers also stated that § 87(2)(b) was free to leave during the incident and that there was no reason to detain him. The officers further added that no physical contact was made between § 87(2)(b) and any of the officers.

Allegation A: PO John Hagan questioned § 87(2)(b)

Allegation B: Sergeant Christopher Zaleski questioned § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) The case of People v. Hollman states that “An obvious starting point in our effort to clarify the difference between a request for information and a common-law inquiry is an examination of the type of questions asked in *De Bour*. The officers asked the defendant what he was doing in the neighborhood and then asked for identification. These questions are permitted as part of a request for information” (encl. 1K-V). § 87(2)(g)

According to the officers, § 87(2)(b) was standing in the same location and looking into their police car, a black Impala. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Kamins New York Guide to Search and Seizure (encl. 1A-D) cites People v. DeBour for the principle that a common-law right to inquire “is activated by a founded suspicion that criminal activity is afoot.” The DeBour Court held that “[c]ourts have refused to find that this standard has been met where officers acted upon a ‘hunch’ that a citizen probably committed a crime, without any articulable reason to support that belief” (encl. 1A-D). In this case, the objective and articulable facts amount to nothing more than a hunch. A hunch does not present reasonable suspicion that criminality is afoot.

§ 87(2)(g)

Allegation C: Sergeant Christopher Zaleski spoke obscenely and/or rudely to § 87(2)(b)

In his two initial statements, § 87(2)(b) stated that Sergeant Zaleski asked him he “hated cops” and called him a “punk.” However, in his CCRB statement, § 87(2)(b) stated that Sergeant Zaleski asked him if “he was one of those guys that said fuck the cops?” and called him a “fucking punk.” § 87(2)(g)

Allegation D: Sergeant Christopher Zaleski used physical force against § 87(2)(b)

Sergeant Zaleski denied this making physical contact with § 87(2)(b). In addition, § 87(2)(b) stated that he also saw no physical contact between § 87(2)(b) and the officers. According to § 87(2)(b), § 87(2)(b) was present for some of the alleged force that was used. The statement of § 87(2)(b), § 87(2)(g) contradicts the statement of § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: